

E-002/CN-91-19 ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna
Patrice M. Vick

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application
for a Certificate of Need for
Construction of an Independent
Spent Fuel Storage Installation

ISSUE DATE: July 18, 1991

DOCKET NO. E-002/CN-91-19

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

I. Proceedings to Date

On April 29, 1991 Northern States Power Company (the Company) filed an application for a certificate of need to construct a nuclear waste storage facility at its Prairie Island nuclear power plant. On May 29, 1991 the Commission found that the application was not substantially complete and required supplementary filings. On July 18, 1991 the Commission accepted the supplemented application as being in proper form and substantially complete.

A copy of the Company's application is on file in the offices of the Department of Public Service, 790 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101 and is open for public inspection during regular office hours.

Copies are also available for public inspection at the Company's offices at 414 Nicollet Mall, Minneapolis; 2302 Great Northern Drive, Fargo, North Dakota; 421 Wabasha St., St. Paul; 825 Rice Street, St. Paul; 1700 East County Road E, White Bear Lake; 3000 Maxwell Avenue, Newport; 2763 First Avenue Northwest, Faribault; 3920 Pepin Avenue, Red Wing; 3515 Third Street North, St. Cloud; 5050 Service Drive, Winona; 500 West Russell Street, Sioux Falls, South Dakota; 4501 68th Avenue North, Brooklyn Center; 5309 West 70th Street, Edina; 210 Lime Street, Mankato; 5505 County Road 19, Shorewood; 1505 Washington Avenue, Montevideo; and 3115 Centerpoint Drive, Roseville.

FINDINGS AND CONCLUSIONS

II. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over applications for certificates of need for nuclear waste storage facilities under Minn. Stat. § 216B.243 (1990). That statute also requires at least one public hearing under the Administrative Procedure Act in certificate of need proceedings. Minn. Stat. § 216B.243, subd. 4 (1990). The Commission's role is to determine whether the proposed facility complies with applicable criteria in statute and rule.

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's application on the basis of its filing and the single public hearing required under the statute. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

III. Issues to be Addressed

Minn. Stat. § 216B.243 (1990) and Minn. Rules, parts 7855.0100-7855.0120 set forth criteria which must be met to establish need for proposed large energy facilities, including nuclear waste storage facilities. Other statutes which may be applicable include Minn. Stat. § 116D, particularly 116D.04, subd. 6 (1990), and Minn. Stat. § 116C.72 (1990). Parties to this proceeding shall address whether the proposed facility meets these criteria.

The Commission also has continuing concerns in regard to Company compliance with the Indian Community's Nuclear Radiation Control Ordinance; energy savings reasonably achievable through conservation; the feasibility of reprocessing used fuel, generating power by means of renewable resources, and other alternatives to above-ground storage; the possibility of the proposed facility becoming permanent due to federal inability to establish a permanent nuclear waste depository; the appropriate standard for risk assessment and for quantifying risk-associated costs; the Company's emergency preparedness; and the eventual costs of transporting the casks from the proposed facility to the permanent federal nuclear waste depository.

IV. Public Participation

Minn. Stat. § 216B.243, subd. 4 (1990) encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated two staff members to coordinate public participation in this proceeding: statistical analyst David L. Jacobson and engineer Michael Michaud. They may be reached by telephone at (612) 297-4562 (Mr. Jacobson) and at (612) 297-7956 (Mr. Michaud). Their address is 780 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in newspapers throughout the state, to encourage maximum public participation.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; (612) 341-7609.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1990); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400 and Minn. Rules, parts 7847.0010 to 7847.0320. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules formal parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any person intending to appear at the hearing as a formal party must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1990).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101, (612) 296-0410.

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

C. Parties and Intervention

Current parties to this proceeding are the Company, the Minnesota Department of Public Service, the Prairie Island Mdewakanton Sioux Indian Community, the Minnesota Public Interest Research Group, the North American Water Office, and Minnesotans for an Energy Efficient Economy. Other persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held on Thursday, August 1, 1991 at 10:00 a.m. and continuing into the early afternoon. The conference will be held in Courtroom 15, Office of Administrative Hearings, 3rd Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

All parties and persons intending to intervene should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the scope of the hearing, the locations and dates of public hearings, discovery procedures, and similar issues.

E. Time Constraints

Under Minn. Stat. § 216B.243, subd. 5 (1990) and Minn. Rules, part 7855.0200, subp. 7, the Commission is required to act on the Company's application within six months of receipt of a substantially complete filing. (The Company has waived the statutory time frame and stated it wished the six month period to run from the date of this Order.) The Commission asks the Administrative Law Judge to conduct contested case proceedings in light of these time constraints. Parties should note the six-month statutory time frame at the outset and be prepared for the expedited hearing schedule that time frame requires.

F. Application of Lobbying Provisions

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq. (1990), apply to certificate of need proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

G. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case hearing shall be held on the Company's certificate of need application. The proceeding shall begin with a prehearing conference on August 1, 1991 at 10:00 a.m. and continuing into the early afternoon. The conference will be held in Courtroom 15, Office of Administrative Hearings, 3rd Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.
2. All parties to this proceeding may serve information requests on any other party. Information requests shall be answered within ten days of receipt.

3. Public hearings shall be held in this matter at times and places determined by the Administrative Law Judge after consultation with the Commission.
4. The Company shall publish notice of the public and evidentiary hearings in this matter in newspapers of general circulation throughout the state. Within 30 days of the date of this Order the Company shall file a proposal detailing its plans to publish such notice, including a proposed text, a list of the newspapers it proposes to use, and proposed publication dates.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of an
Application for a Certificate
of Need for Construction of an
Independent Spent Fuel Storage
Installation

MPUC Docket No. E-002/CN-91-19

OAH Docket No.

NOTICE OF APPEARANCE

Name and Telephone Number of Administrative Law Judge:

Allan W. Klein
612/341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the
above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____